file 3.1

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

24 February 1983

SECOM-D-045

STAT NOTE FOR: [redacted]
Chairman, UDIS

STAT FROM: [redacted]
Chairman

SUBJECT: DOJ's Comments on the Intelligence Authorization Bill

STAT 1. [redacted] provided me DOJ's 4 February 1983 letter to the Director, OMB dealing with Title IV Unauthorized Disclosure of Classified Information. I think we should do everything that we can to encourage passage of such legislation.

STAT 2. Several weeks ago, [redacted] and I discussed this with [redacted]
STAT pointing out that, as written, the proposed Section 791(a) does not permit a cleared contractor employee to discuss classified information with another cleared contractor employee. Gary indicated that it was too late to make the change and, besides, everybody would understand what was meant. The DOJ's proposal for changes in the instant letter may make this a moot point, although unintentionally.

3. All of the language in the DOJ's letter deals with "officers or employees of the US," without recognizing the sizeable contractor employee population which is approved for access to classified information. Whether there is a necessity to mention contactors explicitly, I do not know. But it is essential that the language to be enacted include both federal employees and contractor personnel.

4. Thank you for the copy. Is there anything I should do to assist with the problem?

STAT [redacted]

8 February 1983

NOTE FOR: General Counsel

Associate General Counsel for
Intelligence Community Affairs

Chief, Intelligence Law Division

Chief, Administrative Law Division

Associate General Counsel for
Operations Support

STAT FROM: [redacted]
Chief, Legislation Division

Attached are the official comments of the Department of Justice on the draft Intelligence Authorization Bill. The Department's comments cover the unauthorized disclosure provision, technical and conforming amendments related to the Intelligence Identities Protection Act, FISA Amendments and the proposed Naturalization Act Amendment.

I will be consulting with each of you regarding our course of action on issues within your area of responsibilty.

STAT [redacted]

Attachment

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

General Counsel
83-01071

February 7, 1983

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer-

Central Intelligence Agency
National Security Council

SUBJECT: Justice comments on CIA's proposed draft authorizing appropriations for fiscal year 1984 for intelligence and intelligence-related activities.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than AS SOON AS POSSIBLE.

Questions should be referred to Tracey Lawler (395-4710), the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures
cc: Arnie D

STAT

U.S. Department of Justice M1-8/83.1
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

04 FEB 1983

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

This is in response to your request for the views of the Department of Justice on the Central Intelligence Agency (CIA) proposal to authorize appropriations for fiscal year 1984 for intelligence and intelligence-related activities.

This proposal contains nine chapters which are entitled: (I) Intelligence Activities, (II) Intelligence community Staff, (III) Central Intelligence Agency Retirement and Disability System, (IV) Unauthorized Disclosure of Classified Information, (V) Technical and Conforming Amendments Related to the Intelligence Identities Protection Act of 1982, (VI) Administrative Provisions Related to Intelligence Agencies, (VII) Amendments to the Foreign Intelligence Surveillance Act, (VIII) General Provisions and (IX) Modification of Certain Naturalization Requirements. Titles I, II, III, VI, and VIII cover matters which are unrelated to the concerns of the Department of Justice; therefore, our views will be provided only as to Titles IV, V, VII, and IX.

Title IV - Unauthorized Disclosure of Classified Information

Section 401 of the Intelligence Appropriation Act would amend Chapter 37 of Title 18 of the United States Code to provide criminal penalties for unauthorized disclosure of classified information by federal government employees and others, such as government contractors, who have authorized access to classified information. This would be accomplished by adding a new section 791 to Title 18 as part of the espionage statutes. This Department supports the enactment of the proposed section 791 in principle. We should note that the report to the President by the Interdepartmental Group on Unauthorized Disclosures of Classified Information includes a recommendation to pursue legislation of this type. If a decision is made to proceed with such legislation, there are several modifications that should be made to bring the proposed section 791 in line with the other sections of the espionage statutes.

Presently, there is no general criminal statute for the unauthorized disclosure of "classified information" as such. Title 50 U.S.C. §783(b) prohibits government employees from disclosing classified information to agents of foreign governments or members of communist organizations. Title 18 U.S.C. §798 prohibits the disclosure of classified information, but only if it concerns communications intelligence or cryptographic activities. Additionally, 42 U.S.C. §§2274 and 2277 prohibit the disclosure of Restricted Data pertaining to atomic energy and atomic weapons. Finally, 18 U.S.C. §§793 and 794 prohibit the disclosure of material and information "relating to the national defense." As can be seen, these statutes are limited in their scope by their applicability to only certain classes of persons (i.e., 50 U.S.C. §793), or to only certain types of classified information (i.e., 18 U.S.C. §798).

The Department supports the enactment of a statute similar to the proposed section 791 primarily because there is at least one category of classified information not protected under current law. Executive Order 12356 authorizes classification of information relating to the national defense and to foreign relations. Although the United States Supreme Court in Gorin v. United States, 312 U.S. 19, 28 (1940), held that "national defense" is "a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national perparedness," it is the opinion of the Department that this definition would not in certain cases cover information relating solely to foreign relations. Therefore, even though such information would be properly classifiable under the Executive Order, its compromise would not in all cases constitute a violation of section 793, 794 or any other criminal statute. 1/ A general statute prohibiting the disclosure of "classified information" would remedy this deficiency.

1/ Section 1.3 of Executive Order 12356 also contains other classification categories which may not be protected under present law. The information in these categories concerns (1) foreign government information, (2) scientific, technological, or economic matters relating to the national security, and (3) information from confidential sources. Whether or not information in these categories is protected under present law would depend on the specific nature of the information compromised and whether it related to the national defense (sections 793, 794), concerned communications intelligence or cryptographic activities (section 798), was Restricted Data (42 U.S.C. §§2274, 2274), or was disclosed by a government employee to a foreign agent or member of a communist organization (50 U.S.C. §783).

STAT

Approved For Release 2009/03/23 : CIA-RDP94B00280R001200030008-5

CIA's proposed version of section 791 states in subsection (a) that:

> "Whoever, being an officer or employee of the United States or a person with authorized access to classified information, willfully discloses, or attempts to disclose, any classified information to a person who is not an officer or employee of the United States and who is not authorized to receive it shall be fined not more than $10,000, or imprisoned not more than three years, or both."

In order to bring the proposed section 791(a) in line with the other espionage statutes, the term "discloses, or attempts to disclose" should be modified to read "communicates, delivers, furnishes, transmits, or otherwise discloses." This modification would make section 791 consistent with sections 793, 794, and 798 which prohibit the compromise of classified information in other contexts. This modification would also make it clear to a potential offender that any activity which willfully compromises the classified information would constitute a violation of the statute.

CIA's proposed version of section 791 prohibits disclosure to "a person who is not an officer or employee of the United States and who is not authorized to receive it." Thus, disclosure of classified information to an officer or employee of the United States is not prohibited, even if that officer or employee is not authorized to receive classified information and has no security clearance. Presumably, this limitation is meant to exempt the disclosure of classified information to a government employee in the mistaken belief that the employee holds the requisite security clearance. In the view of the Department, this situation is covered by the statute's requirement that the disclosure be "willful." Thus, mistaken or negligent disclosures would not be criminal. Accordingly, the Department recommends that disclosure be prohibited to "any person not authorized to receive classified information."

Subsection (b)(ii) defines "officer or employee of the United States" as being within the meaning of 5 U.S.C. §§2104 and 2105, and officers and enlisted members of the armed forces within the meaning of 10 U.S.C. §101. It is the opinion of the Department that defining "officers and employees of the United States" through reference to other, non-criminal statutes is unwise and could cause practical problems at trial since the Government would have to prove beyond a reasonable doubt that the defendant's employment falls within the scope of these statutes. The better approach would be for the legislative

history of the statute to state clearly that all officers and employees of the United States are covered without regard to their status vis-a-vis the Civil Service or the armed forces.

Subsection (b)(ii) defines the term "authorized." For the purpose of clarity, we suggest that the term "authorized access" be defined. This would require no major changes in the proposed definition; however, addition of the word "access" would assist in the overall clarity of the definition.

Subsection (d) would exempt the disclosure of classified information by a government officer or employee to an "agent of a foreign power" as long as the disclosure occurs in the course of the employee's official duties and the employee has a reasonable belief that he is authorized to make the disclosure. It is our understanding that this exemption is meant to cover the situation where a government employee, in the course of a routine liaison arrangement, discloses classified information to an official of an allied security service. It also appears to be intended to cover the situation where a U.S. Government sponsored double agent discloses classified information to an agent of a foreign power in order to advance the overall interests of the U.S Government. Since such disclosures would be authorized, it is the Department's position that the exemption in subsection (d) is not needed. This is especially true since only "willful" disclosures would be criminal, as opposed to mistaken or negligent disclosures. With these proposed modifications, the Department supports the enactment of section 791 of Title 18.

Title V - Technical and Conforming Amendments Related to the Intelligence Identities Protection Act of 1982

Section 501(a) of the Intelligence Authorization Act would amend 5 U.S.C. §8312 which provides for the disqualification from receipt of federal annuities or retirement pay for persons convicted of certain federal offenses such as communication of Restricted Data (42 U.S.C. §2274) and communication of classified information by a government employee to agents of a foreign government (50 U.S.C. §783). These offenses are contained in subsection (c) of section 8312. CIA's proposal would add the Intelligence Identities Protection Act (section 601 of the National Security Act of 1947) to the list of offenses, a conviction for which can cause disqualification from the aforementioned annuities and retirement pay. This amendment is consistent with the policy underlying the statute and is not opposed by the Department.

Section 501(b) would amend 8 U.S.C. §1251(a)(7) which provides for the deportation, upon the order of the Attorney General, of aliens convicted of certain offenses such as espionage (18 U.S.C. §§793 and 794), sabotage (18 U.S.C. §§2151-2156), and threats against the President (18 U.S.C. §871). The proposed amendment would allow deportation of an alien convicted under the Intelligence Identities Protection Act by the insertion of "section 601 of the National Security Act of 1947" into the list of offense contained within section 1251(a)(17). This amendment is consistent with the policy underlying the statute and is not opposed by the Department.

Section 501(c) of the proposed Act would amend 38 U.S.C. §3505(b) which provides for the forfeiture of federal veterans benefits for persons convicted of national security- related crimes such as espionage (18 U.S.C. §§793 and 794), treason (18 U.S.C. §2381), and certain activities affecting the armed forces (18 U.S.C. §2387). The proposed amendment would add the Intelligence Identities Protection Act to the list of offenses contained in section 3505(b). This amendment is consistent with the policy underlying the statute and is not opposed by the Department.

Section 501(d) of the proposed Act would amend 42 U.S.C. §402(u)(1) which provides for a court-imposed forfeiture of certain social security benefits for persons convicted of "subversive activities." Included within these activities are convictions of 50 U.S.C. §783 (communication of classified information by a government employee to agents of a foreign government), 18 U.S.C. §§793-798 (espionage), and 18 U.S.C. §§2151-2156 (sabotage). The proposed amendment would add convictions of the Intelligence Identities Protection Act to the enumerated offenses. This amendment is consistent with the policy underlying the statute and is not opposed by the Department.

Section 501(e) of the proposed Act would amend 18 U.S.C. §2516 which authorizes applications to federal courts for orders approving the interception of wire and oral communications by federal investigative agencies. Section 2516(a) contains a partial listing of the offenses for which such authorizations may be applied. Included are violations of the Atomic Energy Act of 1954 (42 U.S.C. §§2274-2277), espionage (18 U.S.C. §792, et seq.), and sabotage (18 U.S.C. §§2151-2156). The proposed amendment would add the Intelligence Identities Protection Act to this list of offenses.

It is the position of the Department that Title III (18 U.S.C. §2510, et. seq.) should not be amended in a piecemeal fashion by singular additions of offenses for which authorization

for electronic surveillance may be applied. Further, the Department has no experience in enforcing the newly-enacted Intelligence Identities Protection Act; therefore, it is unknown to what extent electronic surveillance would be required in such investigations. Accordingly, the Department, at the present time, opposes the amendment to Title III proposed by the CIA.

Section 501(f) of the proposed Act would amend 42 U.S.C. §2000aa (The Privacy Protection Act) which prohibits searches and seizures of work product materials or other documentary materials held by a member of the press or others engaged in first amendment activities unless there is probable cause to believe that the person possessing the materials has committed or is committing the criminal offense to which the materials relate. In sections 2000aa(a)(1) and (b)(1), specific authority is given to conduct such searches if "[t]he offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data . . . ."

The proposed amendment would add to subsections (a)(1) and (b)(1) "information that identifies a covert agent" as an additional category of information for which a search warrant may be issued. The basis of this amendment is that communication of such information would constitute a violation of the Intelligence Identities Protection Act (section 601 of the National Security Act of 1947). Such an amendment preserves the ability to use a search warrant to obtain evidence which relates to a national security offense when it is held by a member of the press who is himself in possible violation of a criminal statute. Accordingly, the amendment is consistent with the policy underlying the Privacy Protection Act.

Title VII - Amendments to the Foreign Intelligence Surveillance Act

Section 701 of the proposed Act would amend section 101(b)(2) of the Foreign Intelligence Surveillance Act (FISA) by modifying targeting standards pertaining to agents of a foreign power. It would permit electronic surveillance of dual nationals who occupy senior positions in the government or military forces of foreign governments, and of former senior officials whether or not they are acting in the United States as members of a foreign government or faction. It appears that this amendment is too broad, since it would apply to any person, including a U.S. person, who formerly held such a position regardless of the time that has passed since then and regardless of the circumstances surrounding that person's presence in the United States.

Section 702 of the proposed Act would amend section 105(e) of FISA and would extend by twenty-four hours the time allowed under FISA to obtain approval from the Attorney General for surveillance on an emergency basis. It is the opinion of the Department that such an extension is unnecessary now that the FISA process has become more routine.

Section 703 of the proposed Act would amend section 105(f) of FISA and would allow dissemination, with notice to the Attorney General, of information indicating threats to life or physical safety acquired in the course of testing, training, or audio counter measures not requiring a court order under FISA. Presently, information from such activities may only be used for training, testing, or enforcement of the laws prohibiting unauthorized surveillance. The Department does not oppose this amendment in principle, but recommends against addition of the word "intended" after the language "procedures approved by the Attorney General." This addition is not needed and would raise unnecessary questions concerning the reasons behind its addition.

Title IX - Modification of Certain Naturalization Requirements

Section 901 of the proposed Act would amend 8 U.S.C. §1427 which establishes the residence requirements for the naturalization of U.S. citizens. CIA's proposal would add a new subsection (g) which would allow residency and physical presence requirements to be waived upon a determination by the Director of Central Intelligence, and concurrence by the Attorney General and Commissioner of the Immigration and Naturalization Service, that the petitioner has made a significant contribution to the national security or national intelligence mission.

The Department supports this amendment in principle; however, this does not appear to be an auspicious time to be offering such a proposal in light of recent stories in the media regarding alleged U.S. government complicity in the admission into this country of Nazi war criminals. If a decision is made to offer this proposal to the Congress, we recommend that it be considered as an amendment to 50 U.S.C. §403h which gives the Director of Central Intelligence, the Attorney General, and the Commissioner of the Immigration and Naturalization Service the authority to waive the legal requirements for permanent residency for aliens when such a waiver is in the national interest. Additionally, section 403h limits the number of persons who can be admitted under its provisions to 100 per fiscal year. The Department recommends that a similar limitation be included in CIA's proposed amendment.

Thank you for the opportunity to present our views on this proposal. If we can be of any further assistance regarding any of the points raised above, please contact us.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs